

1 JOHN W. RALLS (CA Bar No. 148233)  
[jralls@thelen.com](mailto:jralls@thelen.com)  
2 JOHN A. FOUST (CA Bar No. 218824)  
[jfoust@thelen.com](mailto:jfoust@thelen.com)  
3 JOANNA ROSEN (CA Bar No. 244943)  
[jrosen@thelen.com](mailto:jrosen@thelen.com)  
4 THELEN REID BROWN RAYSMAN & STEINER LLP  
101 Second Street, Suite 1800  
5 San Francisco, CA 94105  
Tel. 415.371.1200 // Fax 415.371.1211

6 PATRICK S. HALLINAN (CA Bar No. 33838)  
[butchhallinan@hotmail.com](mailto:butchhallinan@hotmail.com)  
7 KENNETH H. WINE (CA Bar No. 142385)  
[kenwine@hotmail.com](mailto:kenwine@hotmail.com)  
8 HALLINAN & WINE  
9 Law Chambers Building, 345 Franklin Street  
San Francisco, CA 94102  
10 Tel. 415.621.2400 // Fax 415.575.9930

11 Attorneys for Defendants, Counter-Claimants and Third Party Complainants  
DICK/MORGANTI, DICK CORPORATION, THE MORGANTI GROUP,  
12 AMERICAN CASUALTY COMPANY OF READING, PA and  
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA  
13

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA-SAN FRANCISCO DIVISION  
16

17 UNITED STATES OF AMERICA for the Use and  
Benefit of WEBCOR CONSTRUCTION, INC. dba  
18 WEBCOR BUILDERS, and WEBCOR  
CONSTRUCTION, INC. dba WEBCOR  
19 BUILDERS,

20 Plaintiffs,

21 vs.

22 DICK/MORGANTI, a joint venture, DICK  
CORPORATION, THE MORGANTI GROUP,  
23 AMERICAN CASUALTY COMPANY OF  
READING, PA, NATIONAL UNION FIRE  
24 INSURANCE COMPANY OF PITTSBURGH, PA,  
and DOES 1 through 10, inclusive,

25 Defendants.  
26

27 AND RELATED COUNTER-CLAIMS AND  
THIRD PARTY CLAIMS.  
28

Case No.: 3:07-CV-02564-CRB

**DECLARATION OF MICHAEL T.  
AMBROSO IN OPPOSITION TO  
WEBCOR'S MOTION TO LIFT  
STAY**

Date: August 29, 2008

Time: 10:00 a.m.

Place: Courtroom 8

Before: Hon. Charles R. Breyer

1 I, Michael T. Ambroso, declare:

2 1. I am the Assistant General Counsel and Assistant Secretary for defendant Dick  
3 Corporation. Dick Corporation is the managing partner of defendant Dick/Morganti, a Joint  
4 Venture formed between Dick Corporation and Morganti Texas, Inc. ('D/M').

5 2. On behalf of D/M, I have been involved in the San Francisco Federal Building  
6 ('Project') since 2003. I have detailed knowledge of the Project and the events that give rise to this  
7 action, as well as detailed knowledge of Dick/Morganti's submission of claims to the Project  
8 owner, the General Services Administration of the United States government.

9 3. D/M suffered massive financial losses arising out of the Project, and itself has a  
10 claim for over \$26,000,000 million against the GSA. D/M's claim is considerably larger than the  
11 claims of any of D/M's subcontractors, including Webcor.

12 4. A true and correct copy of excerpts from the D/M/Webcor subcontract are attached  
13 hereto as Exhibit A, including Article 38, by which Webcor agreed "to stay any action filed by  
14 [Webcor] as long as the Subcontractor's position is being diligently pursued by Contractor in the  
15 Owner dispute and the Subcontractor's positions are being carried forward through the Contractor's  
16 prosecution of the claims with the Owner."

17 5. With respect to the Project, my task is to ensure that the claims arising out of the  
18 Project—both D/M's own claims as well as the claims of D/M's subcontractors—are prosecuted not only  
19 with diligence, but as quickly and expeditiously as possible, consistent of course with preserving  
20 the value of those claims.

21 6. Even before the Project was completed, I took steps to help achieve this objective,  
22 such as retaining (in May 2005) and working with an outside scheduling expert (Project Controls  
23 and Forensics), and retaining (in October 2005) and working with an outside forensic accountant  
24 (FTI Consulting). In developing and prosecuting these claims to date, D/M has incurred  
25 considerable expense in the work of these experts, as well as in outside attorney costs. Recently, I  
26 have also taken a number of steps to help achieve this objective, including the following:

27 ////

1           a.       D/M has certified and requested a Contracting Officer's Final Decision with  
2 respect to Webcor's CORs 60, 61 and 62.

3           b.       In April 2008, D/M submitted to the GSA Contracting Officer the quantum  
4 portion of its global/omnibus claim, which included all of the properly certified damages  
5 information D/M had to date and which D/M was itself able to certify to the GSA (including  
6 Webcor's damages). A true and correct copy of portions of this submission (including the cover  
7 letter to the Contracting Officer, the claims certification and the damages summary—which includes  
8 Webcor's damages) are attached as Exhibit B. The Contracting Officer has not yet issued her final  
9 decision on this claim, and D/M has filed no appeal. Although D/M would have preferred to  
10 submit its global/omnibus damages statement with the claims of all subcontractors quantified and  
11 certified, it did not have the necessary information to do so by April 2008, and so in the interest of  
12 expediting resolution, it submitted all of the damages information it had at the time.

13           c.       The April 2008 damages statement had several 'blanks' for damages  
14 information that has yet to be provided by D/M's subcontractors. Since that time, D/M has  
15 repeatedly had telephone conferences and met with and implored its subcontractors who have yet  
16 to submit and certify quantified claims to complete the quantification and certification process so  
17 that those elements of the claims can be submitted. I have specifically tasked Joel Heusinger, of  
18 Woods & Aitken, to assist me in these efforts.

19           d.       In early June 2008, D/M retained additional legal counsel, in particular,  
20 attorneys from the Washington, D.C. office of Thelen Reid Brown Raysman & Steiner LLP.  
21 These attorneys will bring additional resources to the effort. In addition, these attorneys specialize  
22 in the prosecution of claims against the GSA and have relationships with the GSA lawyers who  
23 defend such claims that I believe will assist in getting around procedural issues and getting to the  
24 merits of the disputes. My instructions to them have been to take all reasonable steps to expedite  
25 resolution of the claims of D/M and its subcontractors.

26           e.       In addition to pressing forward to meet with subcontractors to assist in the  
27 quantum submissions, D/M has also requested that GSA audit the claims. Typically, GSA will  
28 have its auditors perform audits on the larger claims, including subcontractor claims, to determine

1 that the costs have been incurred and that they are allowable and allocable under Section 31 of the  
2 Federal Acquisition Regulations (FAR). GSA has already audited Webcor's claims which is a  
3 necessary step towards resolution. GSA's auditors are planning to commence their audit of D/Ms  
4 costs on August 18, and D/M has requested that the Contracting Officer commence audits on the  
5 other subcontractor claims as well.

6 f. I, along with other D/M personnel, have also had a number of meetings with  
7 the Contracting Officer and other GSA personnel to, among other things, encourage the GSA to  
8 expeditiously review the claims on this Project. I believe that the GSA's prompt scheduling of  
9 audits has been a positive result of these meetings. I have also encouraged the GSA to promptly  
10 retain their own scheduling consultant for the claims, if that is their preference on how to review  
11 D/Ms schedule analysis contained in the claim.

12 7. On August 5, 2008, I attended a meeting in San Francisco with Webcor's attorneys.  
13 Both at that meeting, and since, I have authorized our outside counsel to file a separate appeal  
14 before the Board on Webcor's behalf and to request a separate status conference before the Board  
15 with regard to Webcor's claim (an idea raised by Thelen attorney Ronan McHugh at the meeting).

16 8. Webcor, in its motion, focuses on D/M not acting immediately to file a separate  
17 appeal on Webcor's behalf after GSA's proposed date of April 11, 2008 for the Contracting Officer  
18 to issue a Final Decision on Webcor's claim. Despite having at least one phone conversation about  
19 the Webcor claims with Webcor's in house counsel (John Bowles) significantly after that April  
20 date, I never received any communication from Webcor requesting that D/M immediately appeal  
21 the Webcor claim to the Board on a deemed denied basis until receipt of Webcor's motion and the  
22 August 5, 2008 meeting. In view of the likelihood that the Board would consolidate all of the  
23 appeals arising out of the Project, I did not believe that filing a separate appeal of Webcor's claims  
24 would expedite resolution.

25 ////

26 ////

27 ////

28

